

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-054153

06/07/2011

COMMISSIONER JOHN R. DOODY

CLERK OF THE COURT
L. Slaughter
Deputy

HOWARD R MCADAMS, et al.

HOWARD R MCADAMS
8540 E VIA MONTOYA
SCOTTSDALE AZ 85255

v.

SULTAN ALSHAIE, et al.

FREDERICK H GOLDINOV

DENISE MCADAMS
8540 E VIA MONTOYA
SCOTTSDALE AZ 85255

MINUTE ENTRY

Courtroom 105-NE

1:37 p.m. This is the time set for Forcible Detainer Trial to the Court. Plaintiffs are present on their own behalf. Defendant is present and represented by counsel, Frederick Goldinov.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Howard McAdams, Denise McAdams, Sultan Alshaie, Mel Shimek and Pam Hauer-Mill are sworn.

Case matters are discussed.

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Plaintiff's exhibit 1 is marked for identification and received in evidence.

IT IS ORDERED granting Defendant's oral Motion to Dismiss made on May 31, 2011.

IT IS FURTHER ORDERED entering judgment finding Defendants not guilty of forcible and detainer.

2:32 p.m. Hearing concludes.

The Court's findings in this matter are as follows;

On December 18, 2009, Howard and Denise McAdams as sellers entered into a "Purchase Contract With Seller Financing" with Sultan Alshaie, as buyer, pursuant to Title 33, Chapter 6, Article 3, A.R.S. §33-741, et seq. See Exhibit 1.

What happened after then is in dispute, with both sides claiming that the other side breached the contract.

The parties subsequently entered into a settlement agreement dated January 20, 2011, but like the original Purchase Contract, that agreement fell apart amid mutual recriminations.

This is at least the second forcible detainer action filed by Plaintiffs against the Defendants. Before this case, Plaintiffs sued Defendants in Maricopa County Superior Court Case No. CV2011-053329. The Complaint in that case asserts the January 20, 2011 settlement agreement as the basis for Plaintiffs' forcible detainer action against the Defendants. The court takes judicial notice of the fact that the January 20, 2011 settlement agreement was attached as an exhibit to the complaint in that case. The case went to trial before the Hon. Benjamin E. Vatz. On April 20, 2011, Commissioner Vatz entered an order finding the Defendants not guilty of forcible detainer. The court did not explain the reason for its decision, at least not on the order dated April 20, 2011.

The trial in this case and the hearing on Defendant's oral motion to dismiss took place on 6/7/2011. The parties stipulated to admit their original Purchase Contract as Exhibit 1.

Forcible entry and detainer is a summary remedy under Arizona law. See A.R.S. §12-1171, et seq. The threshold issue is not whether Plaintiffs have any legitimate claims against the Defendants (and vice versa). Rather, the issue is whether Plaintiffs have the right to use the summary remedy set forth in A.R.S. §12-1171, et seq. Only persons whose cases fall within the various definitions of "forcible entry and detainer" may use the summary remedy. Persons whose cases fall outside the definition of forcible entry and detainer may not use the summary

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remedy in ARS section 12-1171, et seq. but instead must litigate their claims using non-summary procedures.

Among other things, A.R.S. §12-1173.01(A)(3) defines a forcible detainer to include a situation where a person remains in possession after the forfeiture of a contract for conveyance of real property under Title 33, Chapter 6, Article 3, A.R.S. §33-741, et seq.

Exhibit 1 clearly is a contract for conveyance of real property under Title 33, Chapter 6, Article 3, A.R.S. §33-741 et seq. However, in order to bring themselves within the summary remedy Plaintiffs must prove that the contract was “forfeited” within the meaning of the governing statute Article 3.

Under that procedure, a forfeiture must be “completed” completed in one of two ways: through a judgment of forfeiture entered by a court or by recording a declaration of forfeiture. See A.R.S. §33-744 and A.R.S. §33-745, respectively. Obviously, completion by declaration is the easiest way for an aggrieved seller to proceed. However, that procedure may only be used in cases where the parties appointed an “account servicing agent” to process payments and hold their paperwork. An “account servicing agent” must also be a chartered bank, licensed escrow, a licensed attorney, etc. A.R.S. §33-745(A).

Under oath, the Plaintiffs admitted that there was no “account servicing agent” in this case. Plaintiffs also admitted that no court has ever issued an order completing the forfeiture of their contract.

In other words, the undisputed evidence shows that the forfeiture of the contract in this case Exhibit 1 is not yet “complete.”

The settlement agreement dated January 20, 2011 does not help the Plaintiffs. To begin with, the Defendants were found not guilty of forcible entry and detainer by Judge Vatz in a case where the settlement agreement was at the heart of the Plaintiffs’ case. Second, on its face, the settlement agreement attached to the complaint in Case No. CV2011-053329 does not bring the Plaintiffs’ claims within any of the definitions of “forcible entry and detainer” under A.R.S. § 12-1171 et seq. Third, the Plaintiffs admitted that there is no rental agreement between themselves and the Defendants. Fourth, the Plaintiffs (and the Defendant and/or counsel for the Defendant) stated a number of times under oath that the settlement agreement was no longer in effect.

For the foregoing reasons, the court finds the Defendants not guilty of forcible entry and detainer. This judgment is without prejudice to any claims or counterclaims the parties may have against one another outside the summary remedy of forcible entry and detainer.

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FILED: Exhibit Worksheet

ALERT: eFiling through AZTurboCourt.gov is mandatory in civil cases for attorney-filed documents effective May 1, 2011. See Arizona Supreme Court Administrative Orders 2010-117 and 2011-010. The Court may impose sanctions against counsel to ensure compliance with this requirement after May 1, 2011.